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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,563	08/28/2000	Ashok V., Joshi	MIC-98125CP01	7691
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CERAMATEC, INC. 2425 SOUTH 900 WEST SALT LAKE CITY, UT 84119				
EXAMINER				
KIM, CHRISTOPHER S				
ART UNIT		PAPER NUMBER		
3752				
MAIL DATE		DELIVERY MODE		
02/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/649,563

**Applicant(s)**

JOSHI ET AL.

**Examiner**

Christopher S. Kim

**Art Unit**

3752

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 24, 25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 25 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 24 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/CC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 9/12/07/9/24/07-10/25/07

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed December 7, 2007 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. Claim 25 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 12, 2002.
4. Claim 30 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as presumably being drawn to a nonelected species. See applicant's remarks filed September 12, 2007

### ***Priority***

5. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed applications, Application Nos. 08/880,124 and 08/686,730, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The prior filed applications fail to disclose an emanator material physically separated from the housing as recited in claims 1, 28 and 29.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claim 29 is rejected under 35 U.S.C. 102(e) as being anticipated by Ohayon (5,810,253).

First reading:

Ohayon discloses a device comprising:

a housing 30;

a volatile substance 100;

means for orienting 20;

means (column 8, lines 3-6, "pressure therein may be increased by a number of different ways known in the art including, e.g., a pump mechanism") for controllably releasing the volatile substance from the housing;

an emanator material 40.

Second reading:

Ohayon discloses a device comprising:

a housing 30;

a volatile substance 100;

means for orienting 20;

means 36 for controllably releasing the volatile substance from the housing;

an emanator material 40.

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8. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Konicek (4,632,310) or Woodruff (4,995,555).

Konicek discloses a device comprising:

a housing 14;

a volatile substance 18;

means for orienting 16;

means 26 for controllably releasing the volatile substance from the

housing;

an emanator material 22.

Woodruff discloses a device comprising:

a housing 2;

a volatile substance 18;

means for orienting 3;

means 15, 16 for controllably releasing the volatile substance from the

housing;

an emanator material 17.

***Claim Rejections - 35 USC § 103***

9. Claims 1, 24, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohayon (5,810,253) in view of Muramoto et al. (4,477,414).

Ohayon discloses a device comprising: a housing 30; a volatile substance 100; means for orienting 20; controllably releasing means comprising a gas generating cell

(column 8, lines 3-6, "pressure therein may be increased by an number of different ways known in the art including, e.g., a pump mechanism"); an emanator material 40; evaporation increasing means comprising means 62, 621 for increasing circulation of air.

Ohayon does not disclose a means for heating. Muramoto discloses a means 44 for heating an emanator material 16. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the heating means of Muramoto to the device of Ohayon to enhance evaporation.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohayon (5,810,253) in view of Muramoto et al. (4,477,414) as applied to claim 1 above, and further in view of DeLuca (4,294,778).

Ohayon in view of Muramoto discloses the limitations of the claimed invention with the exception of the fan. DeLuca discloses a fan 400. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the fan of DeLuca to the device of Ohayon in view of Muramoto to enhance evaporation.

### ***Response to Arguments***

11. Applicant's arguments filed September 12, 2007 have been fully considered but they are not persuasive.

Applicant argues that, in Ohayon, element 20, not 30, is the housing. Applicant's term "housing" is readable on Ohayon's reservoir 30. There is no rule of law that requires the prior art to use the exact same terms to teach applicant's claimed invention.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher S. Kim/  
Primary Examiner, Art Unit 3752

CK